



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Diego Region

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Arnold Schwarzenegger
Governor

July 16, 2008

CERTIFIED-RETURN RECEIPT REQUESTED
7007 3020 0001 0040 7386

Mario X. Sierra, Director,
General Services Department
City of San Diego
1970 B Street, MS27A
San Diego, CA 92102

In reply refer to:
CAU:14-0329
Place ID: 255226

Dear Mr. Sierra:

**CONDITIONAL EARLY SETTLEMENT OFFER NO. R9-2008-0076 for Alleged
Violations of Effluent Limitations Subject to Mandatory Minimum Penalties under
Water Code Section 13385**

**City of San Diego Convention Center: WDR ORDER NO. R9-2003-0050, Discharge
of Extracted Groundwater to San Diego Bay**

This letter is an offer to the City of San Diego (Discharger) to participate in the Regional Board's Early Settlement Program.

Background:

The City of San Diego's discharge of extracted groundwater, to the San Diego Bay through an outfall from the San Diego Convention Center, is subject to numeric effluent limitations, contained in Order No. R9-2003-0050, NPDES Permit No. CA0109029, *Waste Discharge Requirement for Groundwater Extraction Waste Discharges to San Diego Bay from the San Diego Convention Center, San Diego County*.

Between August 2004 and June 2007, the City reported violations of effluent limitations for copper, cyanide, hydrogen sulfide, and base neutral compounds (as described attached Table) in accordance with Monitoring and Reporting Program No. R9-2003-0050.

Potential Liability:

Water Code Section 13385 requires that a MMP of \$3,000 be imposed for each serious violation. Water Code Section 13385 subdivision (h)(2) defines a 'serious' violation, as any waste discharge that violates an effluent limitation contained in waste discharge requirements (applying to surface water discharges) for a Group I pollutant by 40 percent or more or for a Group II pollutant by 20 percent or more.

Water Code Section 13385 subdivision (i) also requires that a MMP of \$3,000 be imposed for each violation (i.e. any waste discharge that violates an effluent limitation contained in waste discharge requirements and applies to surface water discharges) beginning with the fourth violations in any six-month period.

Pursuant to CWC Sections 13385 (h) and (i) of the CWC, the Regional Board must impose MMP in the amount of sixty nine thousand (\$69,000) (\$3000 for each 23 violations) on the Discharger (see attached Table). Discretionary civil liability above the mandatory minimum for the violations alleged in this Complaint is not recommended.

Please be advised, however, that section 13385 also authorizes the Regional Board, in its discretion, to assess the maximum liability for violations cited in this letter. While CWC Sections 13385(h) and (i) require certain minimum penalties, CWC Section 13385(c) gives the Regional Board authority to impose liability as high as \$10,000 per day for those violations and \$10 per gallon per gallon.¹ CWC Section 13385(e) provides factors to be considered by the Regional Board when determining the amount of any liability imposed under CWC Sections 13385(a) and 13385(c)².

Furthermore, if referred to the Attorney General for prosecution, the Superior Court may assess up to \$25,000 per violation. In addition, the Superior Court may assess up to \$25 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. In due course, an administrative or judicial

¹ CWC Section 13385(c) states: Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

² Pursuant to CWC Section 13385(e): In determining the amount of any liability imposed under CWC Sections 13385(a) and (c), the Regional Board must take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

complaint will be issued to assess penalties for all the violations described above, in an appropriate amount, which will not be less than the mandatory minimum penalty of \$3,000 per violation required by section 13385.

The Permittee may elect to avoid the issuance of an Administrative Civil Liability Compliant (ACLC), by participating in the Regional Board's Early Settlement Program. Details of the proposed settlement are described below.

Offer:

To promote early settlement of administrative enforcement actions, the Regional Board hereby tenders this Conditional Early Settlement Offer. You are hereby informed that you may accept this offer, waive your right to a hearing, and pay the mandatory minimum penalty of \$69,000, for the relevant violations described above. In the event you elect to do so, subject to the conditions below, the Regional Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations described above. Accordingly, the Regional Board will forego issuance of a formal complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional penalties above the required mandatory minimum. To accept this offer, please complete and return the enclosed "**Acceptance of Conditional Early Settlement Offer and Waiver of Right to Hearing**".

Conditions:

Federal regulations require the Regional Board to publish and allow the public 30 days to comment on any settlement of an enforcement action (40 CFR part 123.27(d)(2)(iii)). Upon receipt of your Acceptance and Waiver, the settlement will be published as required by law. If no comments are received within the 30-day period, you will be notified accordingly, and payment in the appropriate amount must be received within an additional seven (7) days. The \$69,000 penalty shall be to the "State Water Resources Control Board Cleanup and Abatement Account."

Following payment, the Regional Board will deem the matter to be final.

If, however, significant comments are received in opposition to the settlement, the matter may be set for a hearing before the Regional Board. In that event, you will be notified that this Offer and your Waiver are withdrawn, you will be free to make any arguments as to any violations that you desire, and your agreement to participate in this proposed settlement will not in any way be binding against you. Additionally, staff will ensure that your agreement to participate in this conditional settlement will be noted in the record in mitigation of any fines or additional fines that may be recommended, and your payment will be credited accordingly.

Mr. Sierra
City of San Diego
Early Settlement for potential MMPs

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July 16, 2008

Should you have any questions about this Conditional Early Settlement Offer, please contact Joann Cofrancesco at (858) 637-5589/ JCofrancesco@waterboards.ca.gov or Mark Alpert at (858)467-2963/ MAlpert@waterboards.ca.gov..

Sincerely,



MICHAEL McCANN
Assistant Executive Officer

Attachment: Summary of Violations Subject to Mandatory Minimum Penalties
Acceptance and Waiver Form 7232

cc by email:

Reed Sato, Office of Enforcement, State Water Resources Control Board

Brian Kelley, Core Regulatory Unit, San Diego Regional Water Quality Control Board

Summary of Effluent Violations Subject to Mandatory Minimum Penalties
Complaint No. R9-2008-0076
San Diego Convention Center

Violation Date/ Period	Violation ID	Constituent	Effluent Limitation	Unit	Permitted Limit	Reported Value	Serious Violation	Mandatory Minimum Penalty	Notes
8/9/2004	266619	base neutral compounds	instantaneous max	ug/L	10.0	10.1	No	\$0	not fourth (or >) violation
8/9/2004	266595	cyanide	instantaneous max	ug/L	1.0	8.0	Yes	\$3,000	cat 2
8/9/2004	756179	cyanide	6-month median	ug/L	1.0	4.0	Yes	\$3,000	cat 2
12/6/2007	755962	cyanide	6-month median	ug/L	1.0	4.5	Yes	\$3,000	cat 2
10/31/2004	756183	H2S	average monthly	ug/L	2.0	7.48	Yes	\$3,000	cat 1
10/31/2004	266616	H2S	daily max	ug/L	4.0	7.48	Yes	\$3,000	cat 1
10/4/2004	756182	Cu	average monthly	ug/L	2.45	14.0	Yes	\$3,000	cat 2
10/4/2004	266613	Cu	daily max	ug/L	4.8	14.0	Yes	\$3,000	cat 2
11/3/2004	756181	Cu	average monthly	ug/L	2.45	6.43	Yes	\$3,000	cat 2
11/3/2004	756180	Cu	daily max	ug/L	4.8	6.43	Yes	\$3,000	cat 2
12/6/2004	755970	Cu	average monthly	ug/L	2.45	8.95	Yes	\$3,000	cat 2
12/6/2004	755963	Cu	daily max	ug/L	4.8	8.95	Yes	\$3,000	cat 2
1/10/2005	755969	Cu	average monthly	ug/L	2.45	15.6	Yes	\$3,000	cat 2
1/10/2005	755968	Cu	daily max	ug/L	4.8	15.6	Yes	\$3,000	cat 2
2/7/2005	755967	Cu	average monthly	ug/L	2.45	3.7	Yes	\$3,000	cat 2
3/7/2005	266672	Cu	average monthly	ug/L	2.45	2.8	No	\$3,000	6th violation w/in 6 mo
8/8/2005	442859	Cu	average monthly	ug/L	2.45	3.3	Yes	\$3,000	
2/6/2006	442875	Cu	average monthly	ug/L	2.45	4.8	Yes	\$3,000	
2/28/2007	507669	Cu	average monthly	ug/L	2.45	2.6	No	\$0	not fourth (or >) violation
4/30/2007	755964	Cu	average monthly	ug/L	2.45	16.3	Yes	\$3,000	
4/30/2207	598757	Cu	daily max	ug/L	4.8	16.3	Yes	\$3,000	
5/14/2007	755961	Cu	average monthly	ug/L	2.45	11.0	Yes	\$3,000	
5/14/2007	755960	Cu	daily max	ug/L	4.8	20.1	Yes	\$3,000	
6/11/2007	755555	Cu	daily max	ug/L	4.8	5.9	Yes	\$3,000	
6/11/2007	598762	Cu	average monthly	ug/L	2.45	5.9	Yes	\$3,000	
TOTAL MMP								\$69,000	

Conditional Early Settlement Offer No. R9-2008-0076
Order No. R9-2003-0050
City of San Diego Convention Center

**ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING; (proposed) ORDER**

City of San Diego
Conditional Early Settlement Offer No. R9-2008-0076
Order No. R9-2003-0050
NPDES No. CA0109029

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the San Diego Regional Water Quality Control Board (Regional Water Board), City of San Diego (Discharger) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Regional Water Board to dispute the allegations of violations described in the Conditional Early Settlement Offer No. R9-2008-0076 (Settlement) which is attached hereto as Exhibit "A" and incorporated herein by reference.

The Discharger agrees that the Settlement shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Regional Water Board to assert jurisdiction over the alleged violations through its Assistant Executive Officer. The Discharger agrees to pay the penalties authorized by California Water Code section 13385, in the sum of \$69,000 (Expedited Payment Amount) which shall be deemed payment in full of any civil liability pursuant to the Water Code sections 13385 and 13385.1 that otherwise might be assessed for the violations described in the Settlement. The Discharger understands that this Acceptance and Waiver waives the Discharger's right to contest the allegations in the Settlement and the amount of civil liability for such violations.

The Discharger understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the Settlement.

Upon execution by the Discharger, the Acceptance and Waiver shall be returned to:

Compliance Assurance Unit
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, California 92123

The Discharger understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Regional Water Board to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Assistant Executive Officer of the Regional Water Board, will be published as required by law for public comment.

Conditional Early Settlement Offer No. R9-2008-0076

Order No. R9-2003-0050

City of San Diego Convention Center

If no comments are received within the notice period which causes the Assistant Executive Officer of the Regional Water Board to reconsider the Expedited Payment Amount, the Assistant Executive Officer will execute the Acceptance and Waiver. Resolution of these violations by the Regional Water Board will preclude Regional Water Board action for these same violations.

The Discharger understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Regional Water Board to resolve the violations set forth in the Settlement may be withdrawn. In that circumstance, the Discharger will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Water Board. For such a liability hearing, the Discharger understands that this Acceptance and Waiver executed by the Discharger will be treated as a settlement communication and will not be used as evidence in that hearing.

The Discharger understands that once the Acceptance and Waiver is executed by the Assistant Executive Officer of the Regional Water Board, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. The Discharger shall pay the Expedited Payment Amount of \$69,000 by a certified check or cashier's check for the full amount payable to "State Water Resources Control Board Cleanup and Abatement Account". The payment will be submitted to the Regional Water Board no later than ten (10) calendar days after the date the Discharger receives written notice of that the Assistant Executive Officer of the Regional Water Board has executed this "Acceptance and Waiver."

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this Acceptance and Waiver.

(Name of Discharger)

By: _____
(Signed Name)

(Date)

(Printed or typed name)

(Title)

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

Date: _____

By: _____

MICHAEL McCANN

Assistant Executive Officer

San Diego Regional Water Quality Control Board